

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEMETRICK McCAIN,

Plaintiff,

No. CIV S-05-0803 WBS KJM PS

vs.

KAISER EMERGENCY HOSPITAL,

Defendant.

ORDER

Plaintiff is proceeding in this action pro se and in forma pauperis. Plaintiff has filed an amended complaint.

The federal in forma pauperis statute authorizes federal courts to dismiss a case if the action is legally “frivolous or malicious,” fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

Plaintiff previously was advised that the complaint must allege the jurisdictional grounds upon which the court’s jurisdiction depends. Federal Rule of Civil Procedure 8(a). It appears from the allegations of the amended complaint that there is no subject matter jurisdiction in federal court. Plaintiff also previously was advised that the complaint must demonstrate how the conduct complained of has resulted in a deprivation of plaintiff’s federal rights. See Ellis v.

1 Cassidy, 625 F.2d 227 (9th Cir. 1980). At best, the amended complaint appears to allege
2 negligence and assault, which are state law claims.

3 Plaintiff will be given one final opportunity to file a complaint that sets forth a
4 proper basis for jurisdiction and alleges a violation of federal rights. Plaintiff is informed that the
5 court cannot refer to a prior pleading in order to make plaintiff's amended complaint complete.
6 Local Rule 15-220 requires that an amended complaint be complete in itself without reference to
7 any prior pleading. This is because, as a general rule, an amended complaint supersedes the
8 original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files an
9 amended complaint, the original pleading no longer serves any function in the case. Therefore,
10 in an amended complaint, as in an original complaint, each claim and the involvement of each
11 defendant must be sufficiently alleged.

12 In accordance with the above, IT IS HEREBY ORDERED that:

13 1. Plaintiff's amended complaint is dismissed.

14 2. Plaintiff is granted thirty days from the date of service of this order to file a
15 second amended complaint that complies with the requirements of the Federal Rules of Civil
16 Procedure, and the Local Rules of Practice; the amended complaint must bear the docket number
17 assigned this case and must be labeled "Amended Complaint"; plaintiff must file an original and
18 two copies of the amended complaint; failure to file an amended complaint in accordance with
19 this order will result in a recommendation that this action be dismissed.

20 3. Pending review of any amended complaint, defendants need not file a
21 responsive pleading until further order of the court.

22 DATED: June 6, 2005.

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25 UNITED STATES MAGISTRATE JUDGE
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